

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

United States of America,) CR No. 4:96-312-CMC
)
)
 OPINION and ORDER
v.)
)
Andre Smith,)
)
Defendant.)
_____)

This matter is before the court on Defendant's *pro se* motion for relief filed in this court pursuant to 28 U.S.C. § 2255. ECF No. 105. Defendant seeks relief pursuant to the Supreme Court's recent decision in *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015).

Defendant's motion is a second or successive motion for relief under 28 U.S.C. § 2255.¹ Section 2255 permits a second or successive motion to be authorized by the appropriate Court of Appeals if it contains, "(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. §§ 2255(h)(1), (2).

Prior to filing a second or successive petition under § 2255, Defendant must obtain certification by a panel of the Fourth Circuit Court of Appeals allowing him to file a second or successive petition. As provided in 28 U.S.C. § 2244, "[b]efore a second or successive application

¹Defendant filed a previous § 2255 motion on January 16, 2008. The motion was dismissed with prejudice as untimely filed. ECF No. 89.

permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).

The requirement of filing a motion in the Fourth Circuit Court of Appeals for permission and securing permission to file a second or successive motion is jurisdictional. Therefore, Defendant’s failure to secure permission from the Fourth Circuit Court of Appeals prior to filing this § 2255 motion is fatal to any action in this court. Accordingly, this motion is dismissed as this court is without jurisdiction to consider it.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON McGOWAN CURRIE
SENIOR UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
August 20, 2015